

Par. 4. Section 1.401(b)–1 is further amended as follows:

1. Paragraph (b)(2)(iii) is removed.

2. Paragraphs (b)(3), (c) and (d)(1)(iv) are added.

The additions read as follows:

§1.401(b)–1 Certain retroactive changes in plan.

* * * * *

(b) * * *

(3) A plan provision described in §1.401(b)–1T(b)(3).

(c) *Special rules applicable to disqualifying provisions.* For special rules applicable to disqualifying provisions, see §1.401(b)–1T(c).

(d) * * *

(1) * * *

(iv) In the case of a disqualifying provision described in §1.401(b)–1T(b)(3), the date described in §1.401(b)–1T(d)(1)(iv) or (v), whichever applies to the disqualifying provision.

Par. 5. Section 1.401(b)–1T is added to read as follows:

§1.401(b)–1T Certain retroactive changes in plan (temporary).

(a) [Reserved]. For further information, see §1.401(b)–1(a).

(b) *Disqualifying provisions.* For purposes of §1.401(b)–1, with respect to a plan described in §1.401(b)–1(a), the term “disqualifying provision” means:

(1) and (2) [Reserved]. For further information, see §1.401(b)–1(b)(1) and (2).

(3) A plan provision designated by the Commissioner, at the Commissioner’s discretion, as a disqualifying provision that either—

(i) Results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or

(ii) Is integral to a qualification requirement of the Code that has been changed.

(c) *Special rules applicable to disqualifying provisions*—(1) *Absence of plan provision.* For purposes of paragraph (b)(3) of this section and §1.401(b)–1(b)(2), a disqualifying provision includes the absence from a plan of a provision required by, or, if applicable, integral to the applicable change to the qualification requirements of the Internal Revenue Code, if the plan was in effect on the date

the change became effective with respect to the plan.

(2) *Method of designating of disqualifying provisions.* The Commissioner may designate a plan provision as a disqualifying provision pursuant to paragraph (b)(3) of this section only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(b) of this chapter.

(3) *Authority to impose limitations.* In the case of a provision that has been designated as a disqualifying provision by the Commissioner pursuant to paragraph (b)(3) of this section, the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to that disqualifying provision during the remedial amendment period. The Commissioner may impose these limits and provide these additional rules only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(b) of this chapter.

(d) *Remedial amendment period.* (1) The remedial amendment period with respect to a disqualifying provision begins:

(i) through (iii) [Reserved]. For further information, see §1.401(b)–1(d)(1)(i) through (iii).

(iv) In the case of a disqualifying provision described in paragraph (b)(3)(i) of this section, the date on which the change effected by an amendment to the Internal Revenue Code became effective with respect to the plan, or

(v) In the case of a disqualifying provision described in paragraph (b)(3)(ii) of this section, the first day on which the plan was operated in accordance with such provision, as amended, unless another time is specified by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(b) of this chapter.

(2) [Reserved]

Michael P. Dolan,
Acting Commissioner of
Internal Revenue.

Approved July 22, 1997.

(Filed by the Office of the Federal Register on July 31, 1997, 8:45 a.m., and published in the issue of the Federal Register for August 1, 1997, 62 F.R. 41272)

Section 501.—Exemption From Tax on Corporations, Certain Trusts, Etc.

26 CFR 1.501(c)(5)–1: Labor, agricultural, and horticultural organizations.

T.D. 8726

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Requirements for Tax Exempt Section 501(c)(5) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations clarifying certain requirements of section 501(c)(5). The requirements are clarified to provide needed guidance to organizations on the requirements an organization must meet in order to be exempt from tax as an organization described in section 501(c)(5).

DATES: These regulations are effective on December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1995, the IRS published in the **Federal Register** (60 F.R. 66228 [EE–53–95, 1996–1 C.B. 766]) a notice of proposed rulemaking under section 501(c)(5). The proposed regulations clarified that organizations whose principal activity is administering retirement plans are not section 501(c)(5) organizations.

A public hearing was held on June 5, 1996. Written comments were received. After consideration of all of the comments, the proposed regulations under section 501(c)(5) are adopted as revised by this Treasury Decision. The comments and revisions are discussed below.

Explanation of Revisions and Summary of Comments

Section 501(c)(5) describes certain

labor, agricultural and horticultural organizations. Section 401(a) sets forth the requirements for exemption for qualified employee benefit pension trusts. Section 501(a) exempts from federal income taxes organizations described in section 401(a) or section 501(c). Thus, section 401(a) and section 501(c)(5) should be read as enactments of Congress *in pari materia*, taken together as one consistent body of law. *Pacific Co. v. Johnson*, 285 U.S. 480, 495 (1932).

The Treasury and IRS believe that section 501(c)(5) should be interpreted in a manner consistent with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974) (ERISA), as amended. ERISA was enacted as a “comprehensive and reticulated statute” to regulate retirement plans and trusts, “the product of a decade of Congressional study of the Nation’s private employee benefit system.” *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 251 (1993), citing *Nachman v. PBGC*, 446 U.S. 359, 361 (1980). Congress intended that pension trusts satisfy the comprehensive requirements of section 401(a), as amended by ERISA, in order to be tax exempt. See S. Rep. No. 383, 93d Cong., 1st Sess. at 33, *reprinted in* 1974-3 C.B. (Supp.) 112; H. Rep. No. 807, 93d Cong., 1st Sess. at 33, *reprinted in* 1974-3 C.B. (Supp.) 236, 266.

Accordingly, Treasury and the IRS continue to believe that an organization whose principal purpose is managing employer-sponsored retirement plans is not an exempt labor organization described in section 501(c)(5). (However, an employer-sponsored pension trust may nevertheless qualify for exemption under section 501(a) if it meets the requirements of section 401(a).) *Morganbesser v. United States*, 984 F.2d 560 (2d Cir. 1993), nonacq. 1995-2 C.B. 2.; *In re Morganbesser*, AOD CC-1995-016 (Dec. 26, 1995).

Consistent with ERISA and interpreting section 401(a) and section 501(c)(5) as part of a consistent whole, these regulations provide a general rule that an organization is not described in section 501(c)(5) if its principal activity is to receive, hold, invest, disburse or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans

or programs. However, to the extent that ERISA provides special rules for certain types of retirement savings plans, it is appropriate to take those rules into account in interpreting provisions of the Code relating to such plans, including section 501(c)(5).

As noted by one commentator, ERISA excepts certain dues-financed plans from Parts 2 and 3 of Title I of ERISA (vesting, funding and certain other qualification requirements). Those pension trusts sponsored by labor organizations for their members, which accept no employer contributions, do not qualify for exemption under section 401(a) because they are not maintained by an employer. Section 401(a), Rev. Rul. 80-306, 1980-2 C.B. 131. Accordingly, the regulations provide that an organization (including a pension trust) may qualify as an organization described in section 501(c)(5) if it meets all of the following requirements:

(1) the organization is established and maintained by another labor organization described in section 501(c)(5) (determined without reference to the tests in Treas. Reg. § 1.501(c)(5)-1(b)(2));

(2) the organization is not directly or indirectly established or maintained in whole or in part by any employer or by any government (or any agency, instrumentality or controlled entity thereof);

(3) the organization is funded by membership dues paid to the labor organization establishing and maintaining the organization and earnings thereon; and

(4) after September 2, 1974 (the date of enactment of ERISA, 88 Stat. 829), the organization’s governing documents have not permitted or provided for nor did the organization accept, any contribution from any employer or from any government (or any agency, instrumentality or controlled entity thereof). Treas. Reg. § 1.501(c)(5)-1(b)(2).

Treas. Reg. § 1.892-2T(c) governs the tax status of a pension trust that is wholly owned and controlled by a foreign sovereign.

Scope

These regulations solely address the tax exempt status of organizations under section 501(c)(5) whose principal activity is to receive, hold, invest, disburse, or otherwise manage funds associated with savings or investment plans or programs.

Other Code sections and tax principles apply to the tax exempt status of these organizations and the tax consequences of these arrangements to employers and participants in these arrangements.

One commentator requested that the IRS clarify that the regulations do not apply to health and welfare benefits not specifically mentioned in the regulations, such as retiree health benefits, death benefits, and group legal services. The regulations address only savings or investment plans or programs, (including pension or other retirement savings plans or programs) and do not address other types of benefits. Cf. Rev. Rul. 62-17, 1962-1 C.B. 87.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act, (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robin Ehrenberg, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.501(c)(5)-1 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding a new paragraph (b).

The addition reads as follows:

§ 1.501(c)(5)-1 *Labor, agricultural, and horticultural organizations.*

* * * * *

(b)(1) *General rule.* An organization is not a organization described in section 501(c)(5) if the principal activity of the organization is to receive, hold, invest, disburse or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs.

(2) *Exception.* Paragraph (b)(1) of this section shall not apply to an organization which—

(i) Is established and maintained by another labor organization described in sec-

tion 501(c)(5), (determined without regard to this paragraph (b)(2));

(ii) Is not directly or indirectly established or maintained in whole or in part by one or more—

(A) Employers;

(B) Governments or agencies or instrumentalities thereof; or

(C) Government controlled entities;

(iii) Is funded by membership dues from members of the labor organization described in this paragraph (b)(2) and earnings thereon; and

(iv) Has not at any time after September 2, 1974 (the date of enactment of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829) provided for, permitted or accepted employer contributions.

(3) *Example.* The principles of this paragraph (b) are illustrated by the following example:

Example. Trust A is organized in accordance with a collective bargaining agreement between labor union K and multiple employers. Trust A

forms part of a plan that is established and maintained pursuant to the agreement and which covers employees of the signatory employers who are members of K. Representatives of both the employers and K serve as trustees. A receives contributions from the employers who are subject to the agreement. Retirement benefits paid to K's members as specified in the agreement are funded exclusively by the employers' contributions and accumulated earnings. A also provides information to union members about their retirement benefits and assists them with administrative tasks associated with the benefits. Most of A's activities are devoted to these functions. From time to time, A also participates in the renegotiation of the collective bargaining agreement. A's principal activity is to receive, hold, invest, disburse, or otherwise manage funds associated with a retirement savings plan. In addition, A does not satisfy all the requirements of the exception described in paragraph (b)(2) of this section. (For example, A accepts contributions from employers). Therefore, A is not a labor organization described in section 501(c)(5).

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*Acting Commissioner of
Internal Revenue*

Assistant Secretary of the Treasury

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